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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 v.

22 SHENG THAO, ANDRE JONES, DAVID  
23 TRUNG DUONG, and ANDY HUNG DUONG,

24 Defendants.

25 Case No. 4:25-CR-00003-YGR

26 **DEFENDANT ANDY DUONG'S NOTICE  
27 OF JOINDER AND ADDITIONAL  
28 MOTION TO SUPPRESS AND FOR  
FRANKS HEARING; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT**

Hearing Date: February 19, 2026  
Hearing Time: 9:00 a.m.  
Judge: Hon. Yvonne Gonzalez Rogers  
Courtroom: 1, 4th Floor

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## NOTICE

PLEASE TAKE NOTICE that on February 19, 2026, at 9:00 a.m., before the Honorable Yvonne Gonzalez Rogers, that Defendant Andy Duong will and hereby does join in Defendant David Duong's motion for suppression and a *Franks* hearing ("D. Duong's Motion"), and also submits his own additional such motion, and will and hereby does move the Court for an order (1) granting a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154, 165 (1978), regarding material misrepresentations and/or omissions in the search warrant affidavits sworn on June 14, 2024 before Magistrate Judge Kandis Westmore, and on June 20, 2024 before Magistrate Judge Donna M. Ryu; (2) suppressing the evidence seized from his residence and vehicle, and from the room of D. Duong's house that the government alleges is attributable to A. Duong, on June 20, 2024; (3) suppressing evidence other than location data seized pursuant to the search warrant signed on March 22, 2024 by Magistrate Judge Donna M. Ryu; (4) suppressing evidence regarding interactions or communications between "any" state or local government or officials, other than those related to the limited set of public officials enumerated in the accompanying affidavits, seized pursuant to the search warrants signed on February 26, 2024 by Magistrate Judge Kandis Westmore, and on May 7, 2024 by Magistrate Judge Donna M. Ryu; and (5) suppressing evidence pre-dating December 1, 2021, seized pursuant to the search warrant signed on February 26, 2024 by Magistrate Judge Kandis Westmore and the search warrant signed on May 7, 2024 by Magistrate Judge Donna M. Ryu. This motion is based on the instant

notice, the attached memorandum of points and authorities, the concurrently filed declaration of Winston Y. Chan, the files and records in this matter, and such evidence and argument as may be presented at the hearing.

DATED: December 4, 2025

Respectfully submitted,

By: /s/ Winston Y. Chan

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1

**MEMORANDUM OF POINTS AND AUTHORITIES**

2

**I. INTRODUCTION**

3 Three decades' worth of public records, press stories, past federal and state criminal  
4 investigations, and inconsistent statements to law enforcement collectively show what should have  
5 been obvious to investigators in this case: the government's key witness ("CC1") lacks all credibility  
6 and CC1's word counts for nothing. Yet a pair of warrant applications signed and executed in June  
7 2024 inexplicably omit this robust history, despite predominantly relying upon CC1's mere say-so for  
8 probable cause to search the Defendants' homes, vehicles, and persons.<sup>1</sup> The warrant applications rely  
9 on CC1's account to allege the existence of a bribery scheme. But properly stripped of CC1's self-  
10 serving spin, these allegations lack support and cannot supply probable cause for the searches. The  
11 critical omissions as to the credibility of CC1, themself the original target of the government's  
12 investigation, render the warrants defective because they deprived the issuing judges of the full context  
13 that the Fourth Amendment demands to evaluate these allegations. A. Duong respectfully joins in D.  
14 Duong's Motion and files the instant motion seeking an order requiring the government to produce its  
15 affiants, FBI Special Agents Duncan Haunold and Ethan Quinn, at a *Franks* hearing so defense counsel  
16 can question them about the material omissions and thereby demonstrate that all materials seized from  
17 A. Duong pursuant to these affidavits should be suppressed.

18 The June 2024 affidavits suffer from another critical defect that is also the subject of D. Duong's  
19 Motion: they fail to provide any logical or factual link between A. Duong's home and vehicle and any  
20 alleged evidence of the listed offense. All evidence seized from these locations pursuant to these  
21 warrants should also be suppressed for the independent reason that they lack probable cause to search  
22 the enumerated locations.

23 Certain evidence seized from other warrants in this case also requires suppression. The  
24 February, March, and May 2024 warrants to search A. Duong's cell phone, iCloud, and Microsoft

25 

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<sup>1</sup> The June 14, 2024 affidavit authorized the search of David Doung, Andy Duoug, Sheng Thao, Andre  
26 Jones, their respective residences and automobiles, the offices of California Waste Solutions ("CWS"),  
27 the Vietnamese American Business Association ("VABA"), and Evolutionary Homes, LLC ("EH"), as  
28 described in the warrant affidavit. *See* Dkt. 120-1, Attach. A-1-A-16. The June 20, 2024 "rollover"  
affidavit authorized the seizure of certain evidence from the Duongs' homes discovered during the  
execution of the original warrant. *See* Dkt. 120-2, Attach. B-1-B-2.

1 accounts were all overbroad. As explained in D. Duong's Motion, the March 2024 affidavit asserted  
2 probable cause to seek historical location data from A. Duong's cell phone provider, but the warrant  
3 permitted additional types of data never mentioned in the affidavit to be seized. The February and May  
4 2024 warrants similarly steamroll over topical and temporal constraints established in their supporting  
5 affidavits. The Court should suppress all of this out-of-scope evidence.

6 **II. FACTUAL BACKGROUND**

7 **A. CC1's Public and Known History of Fraud and Deceit**

8 CC1 has a pervasive and well-known pattern of deception, as D. Duong's Motion describes in  
9 detail. Dkt. 119 at 12–14 (describing CC1's publicly documented history of fraud and threats and lies  
10 to former business partners, debt collection principals (including the City of Oakland), a landlord, and  
11 parties to a real estate transaction; also describing CC1's bankruptcy, forced surrender of their real  
12 estate license, and being investigated as part of a federal money laundering probe). Nevertheless, the  
13 challenged search warrants left out this multitude of readily available red flags as to CC1's credibility—  
14 even though CC1's statements and characterizations of events supplied the primary basis for the  
15 warrants' statement of probable cause. The affidavits further exclude that CC1 repeatedly contradicted  
16 their own accounts of two pernicious accusations: that A. Duong allegedly was involved in attacks on  
17 CC1 on May 3, 2024 and June 9, 2024.

18 **B. Events Leading Up to the June 2024 Searches**

19 The origin of the present case is yet another CC1 fraud scheme gone wrong. The FBI obtained  
20 warrants for CC1's iCloud accounts in July 2023 and February 2024 after learning of CC1's fraud on  
21 the U.S. Postal Service and the owner of a local printing business in the lead-up to the 2022 Oakland  
22 mayoral election. Dkt. 120-1 ¶¶ 32–34, 111. In October 2022, CC1 wrote \$52,563.20 in checks to  
23 cover the postage fees for mailers attacking mayoral candidate Sheng Thao's political opponents—  
24 from an account with a balance of only a few hundred dollars. *Id.* ¶¶ 33, 72. CC1 then disappeared  
25 and left the print shop owner and USPS holding the bag. *Id.* ¶ 33. In early 2024, the Alameda County  
26 District Attorney charged CC1 with a felony count of passing bad checks. *Id.*

27 During the investigation into CC1, agents located information on CC1's iCloud account that  
28 the agents believed implicated CC1 and the Defendants in the alleged bribery scheme now charged in

1 the indictment. *Id.* ¶ 26. Agents obtained a series of warrants for A. Duong’s (and his co-defendants’) 2 cell phone data in February, March, and May 2024. As fraud allegations and open investigations 3 mounted against CC1, they began speaking with Oakland police in May 2024 and gave a salacious, 4 contradictory account of an alleged altercation with the Duongs earlier that month. *See infra* Section 5 IV.A.1. FBI agents interviewed CC1 for the first time on June 6, 2024. Dkt. 120-1 ¶ 30. Based almost 6 entirely on CC1’s statements during that interview, the government obtained a warrant on June 14, 7 2024, to search the Defendants’ homes, vehicles, and persons. Dkt. 120-1. Early in the morning on 8 June 20, 2024, agents raided A. Duong’s home.<sup>2</sup> That same day, the government applied for and 9 received a rollover warrant to seize additional items discovered in the Duongs’ homes. Dkt. 120-2.

10 **C. June 14, 2024 Search Warrant Affidavit**

11 The affiant for the June 14, 2024 warrant was FBI Special Agent Duncan Haunold, who 12 attended the June 6, 2024 interview with CC1 and was previously familiar with evidence from CC1’s 13 iCloud account. Dkt. 120-1 ¶¶ 3, 26 n.1, 30, 30 n.2. Agent Haunold’s affidavit alleges there was 14 probable cause to believe that A. Duong and others involved with EH conspired to and did bribe Thao 15 by financing a negative mailer campaign and by directing financial payments to her partner in exchange 16 for political favors, including Oakland’s purchase of container homes from EH. *Id.* ¶ 24.

17 The affidavit’s conclusions involving A. Duong chiefly rest on a combination of CC1’s 18 statements about various meetings and exchanges; CC1’s interpretations of one-sided communications 19 and CC1’s own electronic notes; and the affiant’s general “training and experience.” *See* Dkt. 120-1. 20 As D. Duong’s Motion explains, the affidavit contains limited impeachment information about CC1 in 21 a single footnote. Dkt. 119 at 7.

22 **October 7, 2022:** The affidavit alleges that CC1 and Thao met in person on October 7, 2022 to 23 discuss the charged bribery scheme, per CC1’s statements from their June 6, 2024 FBI interview. Dkt 24 120-1 ¶¶ 50–52. The affidavit does not allege that A. Duong was involved with this meeting or its 25 planning, but it describes a text message from CC1 to A. Duong purportedly referencing, at various 26

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27 <sup>2</sup> Agents seized evidence from A. Duong’s home, including two cell phones. *See* Decl. of Winston Y. 28 Chan in Supp. of Andy Hung Duong’s Joinder and Additional Mot. to Suppress and for *Franks* Hr’g (“Chan Decl.”) Ex. 1 at 1, 5–6.

1 points, this meeting, the purchase of container homes, and certain payments. *Id.* ¶¶ 53–54. The agent’s  
2 conclusions about the meaning of and connection between these cryptic and disjointed exchanges  
3 derive from the explanation provided during CC1’s June 6 interview about the communications and  
4 about CC1’s own Apple Note created on September 30, 2022 (but last modified November 7, 2022). *Id.*  
5 ¶¶ 49, 55.

6 **October 11, 2022 fundraiser:** The affidavit next alleges that during an October 11, 2022  
7 campaign fundraising event for Thao, she, CC1, and A. Duong excused themselves so they could  
8 privately discuss the alleged bribe. *Id.* ¶¶ 57, 131. The conclusions about the existence and contents  
9 of this meeting rely exclusively on CC1’s telling. *Id.*

10 **Mid-October check to CC1:** The affidavit also claims that on October 17, 2022, CC1  
11 deposited a check from CWS for \$75,000, allegedly an illicit payment for the negative mailer  
12 campaign. *Id.* ¶ 65. The date of the check was September 29, 2022—over a week before CC1 allegedly  
13 broached a bribery scheme with Thao and nearly two weeks before CC1 allegedly solidified the deal  
14 on October 11, 2022. *Id.* Nevertheless, the affiant concludes that the check was provided to cover the  
15 cost of the negative mailers—because that’s what CC1 said. *Id.* The affidavit describes mid-October  
16 texts between A. Duong and CC1 about invoices for \$75,000 and \$50,000 and tax forms, but CC1’s  
17 statement is the only evidence cited for the conclusion that the September 29 check was connected to  
18 the negative mailer campaign, let alone to a bribe. *Id.* ¶¶ 65–70.

19 **November 18, 2022 messages:** The affidavit also concludes that text messages primarily sent  
20 from CC1 to A. Duong on November 18, 2022, reacting to local election results, reference the bribe  
21 CC1 claims to have arranged. *Id.* ¶¶ 74–77. All the text messages are sent from CC1 to A. Duong,  
22 except for A. Duong’s bare-bones comments on election outcomes. *Id.* ¶¶ 74–76.

23 **December 14, 2022 and March 26, 2023 messages:** The affidavit describes messages, some  
24 of which go completely ignored, from CC1 to A. Duong on December 14, 2022 and March 26, 2023,  
25 about a loan to Andre Jones and concludes that the messages evidence a bribery scheme. *Id.* ¶¶ 64,  
26 88–89. This conclusion rests on CC1’s statements to the FBI claiming that the loan was an advance,  
27 which would need to be repaid if Jones failed to deliver on the purported deal. *Id.* ¶ 64.

28 **March 4, 2023 and March 7, 2023 messages:** The affidavit describes more ignored messages

1 from CC1 to A. Duong on March 4, 2023 and March 7, 2023, concerning a draft letter of intent from  
2 the City of Oakland to purchase housing units from EH. *Id.* ¶¶ 79–80. The affidavit cites CC1’s  
3 statements to the FBI to conclude that CC1 drafted the letter in hopes that it would become official. *Id.*  
4 ¶ 79. Nothing in the affidavit alleges that A. Duong was involved with the draft letter.

5 **March 9, 2023 meeting:** The affidavit next describes a supposed meeting at the restaurant  
6 Skates on the Bay on March 9, 2023, where it alleges that the purported bribe was reaffirmed and more  
7 payments were promised to Jones and Thao. *Id.* ¶¶ 81–82. A. Duong’s purported attendance at this  
8 meeting, along with the contents of the alleged meeting, rest entirely on CC1’s statements to the FBI.  
9 *Id.* The affidavit references a pair of expenses on an Apple Note in CC1’s phone, but neither expense  
10 report mentions A. Duong. *Id.* ¶ 81.

11 **March 16–17, 2023 messages:** The affidavit next describes unsolicited text messages from  
12 CC1 to A. Duong that it concludes evidence the bribe and the supposed additional payments that were  
13 agreed to at the Skates by the Bay meeting. *Id.* ¶¶ 83–85. The affidavit offers CC1’s statements and  
14 the affiant’s prior conclusions in support of this assertion. *Id.* ¶¶ 84–85.

15 **March 26, 2023 messages and CC1’s Note:** As described in D. Duong’s Motion, the affidavit  
16 turns to a convoluted stream of messages between CC1 and A. Duong, including messages allegedly  
17 expressing frustration with a supposedly surprise requirement to submit a formal funding proposal to  
18 the City of Oakland, along with commentary about communication etiquette, prior support of Thao,  
19 and Jones’ motivations. *See* Dkt. 119 3–4; Dkt. 120-1 ¶¶ 86–88. It interprets these messages, along  
20 with other cursory responses sent by A. Duong to CC1 regarding the contents of an Apple Note CC1  
21 claims outline the purported deal, to mean that A. Duong was affirming and ratifying the alleged  
22 scheme. Dkt. 120-1 ¶¶ 89–92. This interpretation, however, is supported only by the affiant’s own  
23 training and experience, combined with statements from CC1 that reinforced the conclusion the affiant  
24 had already formed about what the Apple Note reflected. *Id.* ¶¶ 87–92.

25 **April 2023 messages:** The affidavit later draws conclusions as to an April 11, 2023 message  
26 from CC1 regarding draft consultant compensation terms and an April 18, 2023 message from  
27 D. Duong to CC1 about advancing funds to Jones contingent upon Jones sensibly signing a contract.  
28 Dkt. 120-1 ¶¶ 97–98, 102. But the affiant does not allege that A. Duong ever responded or was

1 otherwise involved beyond his mere presence in the threads where these messages were sent. *Id.*  
2 ¶¶ 98, 102.

3 **September 2023 message:** The affidavit cites a message from CC1 to A. Duong about a distrust  
4 CC1 had developed about the mayor and pushing for a meeting with A. Duong, D. Duong, and a third  
5 person. *Id.* ¶ 116. The affidavit omits that this erratic message came amid a slew of others from CC1  
6 to A. Duong and that A. Duong never responded to CC1’s comments about the mayor. Chan Decl. Ex.  
7 at 2–3.

8 **May 3, 2024, incident:** The affidavit also describes an altercation that CC1 claimed CC1 had  
9 with the Duong family on May 3, 2024, that resulted in an alleged assault by individuals supposedly  
10 acting at the behest of the Duongs. Dkt. 120-1 ¶ 29. The affidavit’s account of this alleged incident  
11 derives from CC1’s statements to law enforcement over a series of interviews on May 5, May 14, and  
12 June 6, 2024, as well as from a May 9 letter CC1 wrote which the FBI obtained on May 15. *Id.* ¶¶ 29,  
13 119–21, 126–27, 139–40. According to CC1: CC1 was locked out of the offices at 1211 Embarcadero  
14 by members of the Duong family; multiple people supposedly engaged by a Duong family member  
15 appeared, accosted CC1, and stole some of CC1’s valuables; and someone contacted Thao, which is  
16 why, CC1 believed, the Oakland Police Department (“OPD”) did not respond to the scene. *Id.* ¶¶ 119–  
17 21. As alleged in the affidavit, A. Duong’s purported involvement comprised only two things: (i) being  
18 one of three people to lock CC1 out of the EH offices for failure to pay rent, and (ii) communicating  
19 on the phone with a Duong family member and OPD. *Id.* ¶¶ 119, 122–24. The first rests entirely on  
20 CC1’s statements and the second is attributed to toll records showing calls between A. Duong and his  
21 family, and OPD phone numbers. *Id.* ¶¶ 119, 122–24.

22 **June 9, 2024 shooting at CC1’s residence:** The incendiary allegations in the affidavit framing  
23 the shootout outside CC1’s home as organized by the Duongs are well-documented in D. Duong’s  
24 Motion. Dkt. 119 at 6–7. Crucially, the affidavit’s theory of a targeted attack orchestrated by the  
25 Duongs, all for the fanciful purpose of scaring CC1 off from speaking to investigators, chiefly relies  
26 on CC1’s account of the shooting. Dkt. 120-1 ¶ 144. The specific allegation that A. Duong was  
27 involved in the shooting rests on just two pieces of evidence: (1) toll records showing that around the  
28 time of the shooting A. Duong was in phone communication with an Asian man with an alleged violent

1 criminal history (*id.* ¶¶ 148–50), and (2) CC1’s statement that the gunmen were a Black and an Asian  
2 man—which itself is contradicted on the face of the affidavit by (i) CC1’s own admission that they  
3 were not certain of their own account since the shooters’ facial features were obscured by hoodies; (ii)  
4 an independent witness’s identification of the shooters as two Mexican men; and (iii) intel from a  
5 confidential human source that the shooter was a Hispanic man. *Id.* ¶¶ 146–47. CC1 has since publicly  
6 admitted CC1 fired first after they saw suspects in two cars breaking into CC1’s SUV, confirming CC1  
7 lied to the FBI prior to the June 2024 warrants, and that in truth the shooting was related, at most, to a  
8 random botched car theft. Chan Decl. Ex. 4 at 2–3.<sup>3</sup>

9 **D. June 20, 2024 Rollover Warrant Affidavit**

10 On June 20, 2024, during the execution of the warrant supported by the June 14, 2024 affidavit,  
11 FBI Special Agent Quinn submitted another affidavit seeking a “rollover” warrant to seize certain  
12 newly listed physical items. Dkt. 120-2 ¶¶ 13–23, Attach. B1, B-2. The rollover search warrant  
13 affidavit incorporates the original June 14, 2024 affidavit by reference. *See id.* ¶ 2, Ex. A. It also  
14 supplements the statement of probable cause with six categories of evidence, some of which were  
15 discovered during the execution of the first set of search warrants on June 20, 2024 and were the subject  
16 of the rollover warrant itself: (i) [REDACTED] [REDACTED]  
17 [REDACTED] (ii) [REDACTED]  
18 [REDACTED] (iii) [REDACTED]  
19 [REDACTED] (iv) [REDACTED]

20 [REDACTED]  
21 [REDACTED] (v) additional information about the shooting at CC1’s house,  
22 including that CC1 had given inconsistent statements about the type of Glock firearm they used to  
23 “defend” themselves during the shooting and evidence that the shooter used a 9mm firearm; and (vi) May

24 <sup>3</sup> Ultimately, a Hispanic male matching the independent witnesses’ descriptions of the shooter was  
25 arrested and charged earlier this year for the shooting. Chan Decl. Ex. 3. He has publicly admitted to  
being the gunman, explaining that while he was on his way home, he approached CC1’s car, CC1 shot  
at him, and he fired back. Chan Decl. Ex. 4 at 2–3.

27 <sup>4</sup> [REDACTED]  
28 [REDACTED].

1 2023 text messages from CC1 to a third party regarding CWS. *Id.* ¶¶ 13–21, 23.

2 **E. Other Search Warrants**

3 Prior to the June 2024 search warrants, the government obtained three other search warrants as  
4 to A. Duong. On February 23, 2024, investigators submitted an affidavit in support of a search warrant  
5 application for information from Apple associated with A. Duong’s Apple ID. Chan Decl. Ex. 5. On  
6 May 7, 2024, investigators submitted a nearly identical affidavit in support of a search warrant  
7 application for information from Microsoft associated with A. Duong’s CWS email account. Chan  
8 Decl. Ex. 6. In relevant part, the Apple warrant authorizes the search and seizure of records from  
9 January 1, 2020 to February 23, 2024 (the date of its issue). Chan Decl. Ex. 5, Attach. B at 5. The  
10 Microsoft search warrant authorizes the search and seizure of documents from January 1, 2019 to May  
11 7, 2024 (the date of its issue). Chan Decl. Ex. 6, Attach. B at 4. The February and May 2024 warrants  
12 also authorize the seizure of “[e]vidence, records, or communications related to any interactions  
13 between [CWS] (or any of its employees or representatives), and any state or local government body  
14 or government officials.” Chan Decl. Ex. 5, Attach. B at 6; Chan Decl. Ex. 6, Attachment B at 5.

15 On March 22, 2024, agents submitted an affidavit in support of a search warrant application for  
16 information about the location of cellular telephones believed to be linked to A. Duong to corroborate  
17 his attendance at certain in-person meetings. Dkt. 120-3 ¶¶ 1, 88. The warrant itself authorizes seizure  
18 of additional categories of information, including subscriber identities and addresses; billing and  
19 payment information; account start and service records; device and instrument identifiers; and complete  
20 connection/session records, including IP addresses, sector information, and timing advance data. *Id.*,  
21 Attach. B-1–B-2.

22 **III. LEGAL STANDARD**

23 As set forth in D. Duong’s Motion, a search warrant may only be issued upon a showing of  
24 probable cause. Dkt. 119 at 8, citing U.S. Const. amend. IV. In evaluating whether a warrant is  
25 supported by probable cause, the reviewing magistrate must “make a practical, common-sense decision  
26 whether, given all the circumstances set forth in the affidavit before [her], including the ‘veracity’ and  
27 ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that  
28 contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213,

1 238 (1983). The reviewing magistrate must ensure that she has “a ‘substantial basis for . . .  
2 conclud[ing]’ that probable cause existed.” *Id.* (quoting *Jones v. United States*, 362 U.S. 257, 271  
3 (1960)). Evidence obtained in violation of the Fourth Amendment is generally subject to the  
4 exclusionary rule, which “requires courts to suppress any evidence obtained as a ‘direct result of an  
5 illegal search or seizure,’ as well as ‘evidence later discovered and found to be derivative of an  
6 illegality,’ the so-called ‘fruit of the poisonous tree.’” *United States v. Ngumezi*, 980 F.3d 1285, 1290  
7 (9th Cir. 2020). Suppression is required “if the magistrate or judge in issuing a warrant was misled by  
8 information in an affidavit that the affiant knew was false or would have known was false except for  
9 his reckless disregard of the truth,” *United States v. Leon*, 468 U.S. 897, 923 (1984), or where the  
10 affidavit supporting the warrant was “so lacking in indicia of probable cause as to render official belief  
11 in its existence entirely unreasonable.” *United States v. Underwood*, 725 F.3d 1076, 1085 (9th Cir.  
12 2013) (quoting *Leon*, 468 U.S. at 922). Under this analysis, providing an affidavit with deliberate or  
13 reckless omissions that tend to mislead is equivalent to providing an affidavit with deliberately falsified  
14 information. *Id.*

15 Under *Franks v. Delaware*, 438 U.S. 154 (1978), when the defendant’s motion to suppress  
16 “makes a substantial preliminary showing” that the affiant (1) included “a false statement knowingly  
17 and intentionally, or with reckless disregard for the truth” in the affidavit that was (2) material, i.e.,  
18 “necessary to the finding of probable cause,” the court must order a hearing on that motion. *Id.* at 155–  
19 56. This preliminary showing does not need to prove an actual *Franks* violation. *United States v.*  
20 *Stanert*, 762 F.2d 775, 781 (9th Cir. 1985), *amended by*, 769 F.2d 1410 (9th Cir. 1985). Once the  
21 defendant has made the preliminary showing, the court conducts an evidentiary *Franks* hearing to  
22 ultimately determine whether the defendant has established the two elements of a violation by a  
23 preponderance of the evidence. *United States v. Perkins*, 850 F.3d 1109, 1116 (9th Cir. 2017). If so,  
24 the court must void the warrant and suppress all fruits of the search. *Id.*

25 **IV. ARGUMENT**

26 The Court should suppress all evidence gathered pursuant to the June 2024 warrants because  
27 the government knowingly and recklessly omitted critical exculpatory and impeachment information  
28 relating to CC1. This information was material because, had the affidavits included it, the magistrate

1 judges never would have found probable cause to sign the warrants. At the very least, this satisfies the  
2 preliminary showing required for a *Franks* hearing. All evidence seized pursuant to the June 2024  
3 warrants should also be suppressed because the affidavits do not support the inference that the evidence  
4 authorized to be seized would actually be located there. Certain evidence seized pursuant to the  
5 February, March, and May 2024 warrants should likewise be suppressed because they authorize  
6 searches beyond the scope of probable cause asserted in the supporting affidavits.

7 **A. The June 2024 Affidavits Lack Probable Cause**

8 Evidence gathered pursuant to both June 2024 warrants should be suppressed because the  
9 applications for them knowingly and recklessly omitted (1) information about CC1’s history of proven  
10 fraud that completely undermines CC1’s general credibility, (2) CC1’s inconsistent statements about  
11 the May 3, 2024 incident, and (3) forensic and eyewitness evidence directly refuting CC1’s accusation  
12 that the Duongs were involved in the June 9, 2024 shooting. By omitting this information, the affiants  
13 misled the magistrate judges who signed the warrants into concluding that the applications were  
14 supported by probable cause. The omissions fatally undermine both affidavits’ showing of probable  
15 cause for the searches.

16 Even if the June 2024 affidavits had included this impeachment information, they fail to  
17 establish probable cause to search A. Duong’s home and vehicle because they supply no logical or  
18 factual link between these places and the existence of evidence for the alleged crime. And the specific  
19 items discovered on June 20, 2024 and cited in the rollover warrant affidavit cannot provide probable  
20 cause for their seizure from A. Duong’s home and vehicle.

21 **1. The June 2024 Affidavits Knowingly and Recklessly Omitted Evidence**

22 The affiants omitted crucial information bearing on CC1’s credibility, despite the affidavits’  
23 dependence on CC1’s statements and obvious parallels between their history and behavior. All this  
24 information was either known by the affiants or public at the time the affidavits were submitted.

25 The first prong of the *Franks* analysis requires courts to determine whether the affidavit  
26 included “a false statement knowingly and intentionally, or with reckless disregard for the truth.”  
27 *Franks*, 438 U.S. at 155. The omission of information or inclusion of misleading information in an  
28 affidavit is done knowingly when those misrepresentations were “all facts that were within [the

1 affiant's] personal knowledge." *Chism v. Washington State*, 661 F.3d 380, 388 (9th Cir. 2011). An  
2 affiant acts with reckless disregard for the truth when he "in fact entertained serious doubts as to the  
3 truth" of the affidavits or had "obvious reasons to doubt the veracity of the informant or the accuracy  
4 of his reports." *United States v. Davis*, 617 F.2d 677, 694 (D.C. Cir. 1979); *see Bravo v. City of Santa*  
5 *Maria*, 665 F.3d 1076, 1088 (9th Cir. 2011). Three key categories of information were knowingly or  
6 recklessly left out of the affidavits.

7 *First*, the June 2024 affidavits fail to disclose information regarding CC1's track record of fraud  
8 and deception. *See supra* Section II.A. Almost all the omitted information about CC1's past was  
9 publicly reported in the media or readily accessible in public records from at least 33 lawsuits against  
10 CC1, bankruptcy filings, and Department of Real Estate records. *See* Dkt. 119 at 12–14; Dkt. 120-6.  
11 Even if the affiants claim not to have had actual knowledge of this pertinent information at the time of  
12 the affidavits, it was reckless not to investigate and report this record to the magistrate judges given  
13 how much the affiants already knew about CC1's record. *See* Dkt. 119 at 7. All this known information  
14 should have raised "serious doubts" about the "accuracy of the information contained" in the affidavits,  
15 which relied mostly on CC1's statements. *Davis*, 617 F.2d at 694. Other non-public information about  
16 CC1's past was known to the affiants long before the June 2024 warrants but not reported in the  
17 affidavits, including that CC1 was the subject of a federal money laundering probe. Dkt. 120-15.

18 *Second*, the June 2024 affidavits fail to disclose nearly every major inconsistency across CC1's  
19 various statements in the aftermath of the May 3, 2024 incident at 1211 Embarcadero. The affidavits  
20 paint a one-sided picture of the incident from a selection of CC1's statements but withhold that CC1  
21 gave OPD investigators contradictory accounts of at least three pivotal details of the altercation on May  
22 3, 2024: (i) who beat CC1 up;<sup>5</sup> (ii) what they took;<sup>6</sup> and (iii) who called 9-1-1.<sup>7</sup> The affiants were

23 <sup>5</sup> Descriptions of nine black men and one Asian "ringleader" (Chan Decl. Ex. 13 at 18:54–19:30, 20:25–  
24 21:15, 23:11–23:43), versus a group of "black people," "Asian people," and "people who were white  
25 or something else" (Chan Decl. Ex. 12 at 21:12–21:23), versus "the Duongs" themselves (Chan Decl.  
Ex. 14 at 2).

26 <sup>6</sup> Various wearable accessories, two phones, and \$1,000 cash (Chan Decl. Ex. 13 at 22:31–22:50,  
27 29:33–31:45), versus the aforementioned items plus CC1's car and house keys (*id.* at 39:25–39:51).

28 <sup>7</sup> D. Duong called 9-1-1 (Chan Decl. Ex. 13 at 48:16–48:34), versus A. Duong called 9-1-1 (*id.* at  
48:50–49:08).

1 clearly aware of these contradictions because at least one attended the June 6, 2024 interview with CC1  
2 and the affidavits reference portions of the OPD interviews. Dkt. 120-1 ¶¶ 119–21, 127. The affidavits  
3 provided to the magistrate judges misleadingly presented CC1’s statements about the May 3 incident  
4 as coherent and consistent when they clearly were not.

5 *Third*, as described in D. Duong’s Motion, the June 2024 affidavits omit multiple streams of  
6 evidence from forensic and eyewitness sources disproving CC1’s account of the June 9, 2024 shooting,  
7 including evidence the FBI *itself* collected immediately after the shooting. *See* Dkt. 119 at 14–17.  
8 Despite having obtained evidence showing the shooting was a random encounter between strangers  
9 and was initiated by CC1, the government doubled down in the rollover affidavit on its erroneous  
10 speculation about the Duongs’ involvement in the shooting, citing to cherry-picked information  
11 gleaned from the June 20, 2024 searches that it argued bolstered its initial theory regarding the Duongs.  
12 *Id.* at 16; Dkt. 120-2 ¶¶ 13–14. It omitted a ShotSpotter report indicating that CC1 fired multiple rounds  
13 at the gunmen before they ever fired a single round. Dkt. 119 at 15; Dkt. 120-20 at 4–5. [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 **2. The Omissions Undermine Probable Cause**

19 These omissions are material because they deprived the magistrate judges who signed the June  
20 2024 warrants of vital information: CC1’s statements, upon which the applications chiefly relied for  
21 probable cause, were worthless. When these unreliable statements are properly cast aside, the affidavits  
22 lack probable cause to search A. Duong and his property.

23 Once omissions made knowingly or with reckless disregard for the truth are identified in the  
24 affidavit, under the second prong of the *Franks* analysis, the court must determine whether those  
25 omissions are material to the finding of probable cause. 438 U.S. at 155–56. As set forth in D. Duong’s  
26 Motion, the key inquiry for materiality is “whether probable cause remains once the evidence presented  
27 to the magistrate is supplemented with the challenged omissions” and the court disregards any false  
28 information included in the warrant affidavit. Dkt. 119 at 9–10 (citing cases). This exercise involves

1 striking the false statements and restoring the omissions in the affidavit so that it may be determined  
2 whether there is a substantial basis to conclude that contraband or evidence of a crime will be found in  
3 a particular place. *Stanert*, 762 F.2d at 775; *see also United States v. Esparza*, 546 F.2d 841, 844 (9th  
4 Cir. 1976).

5 Courts in the Ninth Circuit routinely invalidate warrants when the supporting affidavits omit  
6 critical impeachment information about an unreliable informant, like CC1. *See* Dkt. 119 at 18–20  
7 (citing cases). As D. Duong’s Motion explains, extreme caution is necessary when a warrant affidavit  
8 relies on criminally compromised informants like CC1 because they often “manufacture evidence to  
9 create something of value, setting up and betraying friends, relatives” in order to “‘get’ a target of  
10 sufficient interest to induce concessions from the government.” Dkt. 119 at 10–11; *Commonwealth of*  
11 *Northern Mariana Islands v. Bowei*, 243 F.3d 1109, 1124 (9th Cir. 2001).

12 For this reason, courts, including in the Ninth Circuit, require that applications relying on an  
13 unreliable informant’s statements be corroborated by multiple independent sources. *E.g., United States*  
14 *v. Loloee*, 2025 WL 671107 (E.D. Cal. Mar. 3, 2025); *United States v. Bennett*, 219 F.3d 1117 (9th Cir.  
15 2000). For example, in *Loloee*, the affidavit supporting a search warrant alleged that the defendant  
16 illegally employed people not authorized to work in the United States but omitted material  
17 impeachment information as to the credibility of several witnesses who testified to this allegation. *Id.*  
18 at \*17–\*18. The court did not find that this was detrimental to the warrant, however, because the  
19 affidavit did not “rely[] on [the compromised sources’] claims alone to establish probable cause.” *Id.*  
20 at \*17. The court reasoned that the government conducted a thorough investigation to “verify” the  
21 compromised sources’ claims, which was demonstrated by the affidavit’s incorporation of “evidence  
22 from multiple, independent sources.” *Id.*; *cf. United States v. Hall*, 113 F.3d 157, 160–61 (9th Cir.  
23 1997) (warrant invalid when impeachment information about an informant’s conviction was not  
24 disclosed to the magistrate and probable cause depended entirely on the word of the informant).

25 **a. June 14, 2024 affidavit**

26 The June 14, 2024 affidavit wields CC1’s statements to support nearly every allegation  
27 involving A. Duong, with many of the affidavit’s core allegations relying *exclusively* on CC1’s  
28 statements. For instance, the allegations that any purported deal was ever reached between CC1 and

1 Thao on October 7, 2022, and that A. Duong met with CC1 and Thao four days later to solidify the  
2 terms, derive solely from CC1's uncorroborated statements. *Id.* ¶¶ 55, 57, 131. The affidavit never  
3 alleges that A. Duong had any foreknowledge of CC1's October 7, 2022 meeting with Thao or CC1's  
4 intentions to propose a bribery scheme at that meeting. *Id.* ¶¶ 49–52. Instead, it only signals that CC1  
5 hatched, initiated, and executed any such scheme all on their own, or more likely, that they made it all  
6 up.<sup>8</sup> Similarly, the allegation that A. Duong attended a March 9, 2023 meeting at Skates on the Bay  
7 where supposedly the core of the scheme was reaffirmed and terms renegotiated rests entirely on CC1's  
8 statements to the FBI. *Id.* ¶¶ 81–82.

9 The affidavit's conclusions of wrongdoing, even if informed by some additional measure of  
10 alternative evidence, should be disregarded because CC1's statements are what give even that evidence  
11 its incriminating texture. For example, after discounting CC1's statements about an alleged deal, the  
12 texts exchanged between A. Duong and CC1 on November 18, 2022 about the local District Attorney  
13 election results merely convey a tongue-in-cheek reaction to the consequence of the winner being a  
14 candidate CC1 did not support, followed by A. Duong's riposte ascribing that apparently unexpected  
15 electoral outcome to a common adage about politics.<sup>9</sup> *Id.* ¶¶ 74–77. The same goes for dozens of  
16 other, predominantly one-sided, messages sent by CC1 that A. Duong generally did not acknowledge,  
17 respond to, or meaningfully engage with. *Id.* ¶¶ 64, 79–80, 97–98, 116.

18 Other allegations in the affidavit stem from incriminating interpretations (sourced from CC1's  
19 statements) of otherwise benign evidence involving A. Duong. For example, the affidavit alleges that  
20

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21 <sup>8</sup> CC1 spammed A. Duong with several messages: "Meet with Sheng," "She will buy 100 units," "If  
22 mayor," "One catch." Ignoring CC1's message about a "catch," Andy Duong responds, "Guaranteed?"  
23 CC1 then mentions a "\$300k contract," and Andy Duong again ignores CC1. *Id.* CC1 sends another  
24 message that "Sheng is going to call you re \$\$," Andy Duong responds, "Lol" and "What money?" *Id.*  
25 ¶¶ 53–55.

26 <sup>9</sup> CC1, "So we may go to jail ... But we are \$100 million dollars richer." A. Duong, "Money buys  
27 everything;" CC1, "You are right! ... Plus we have a 10 year extension to CWS." Dkt. 120-1 ¶¶ 74–  
28 76. Although CC1 inserts unexplained references to a large sum and separately to CWS, A. Duong  
[REDACTED]

1 in mid-October 2022, A. Duong instructed CC1 via text to fabricate invoices to disguise the true nature  
2 of a \$75,000 check that CC1 claimed was for the negative mailers. *Id.* ¶¶ 68–69. Removing CC1’s  
3 unreliable statements, the interpretations of the texts and the resulting conclusion clings to two crumbs  
4 of insufficient circumstantial evidence: the date that CC1 deposited the check, and the supposed  
5 correlation between the amount of the check and the cost of the mailers. *Id.* ¶ 65. Elsewhere in the  
6 affidavit, CC1 allegedly paid the print shop owner well over \$75,000 by wire transfer and bounced  
7 checks. *Id.* ¶ 72. Another section of the affidavit introduces yet another potential price for the mailers,  
8 explaining that an independent expenditure form was filed by CC1 on or around January 30, 2023,  
9 which claimed cumulative expenditures in November 2022 for the 2022 Oakland mayoral election  
10 mailers well into six figures. *Id.* ¶ 16. Moreover, aside from noting in passing CC1’s baseless  
11 statements about CC1’s belief that the date is incorrect, the affidavit never grapples with the fact that  
12 the \$75,000 check is dated September 29, 2022—nearly two weeks *before* the supposed agreement for  
13 the mailers was allegedly solidified or CC1 first contacted the print shop owner to commission the  
14 negative mailer job. *Id.* ¶¶ 65, 132 n.20.

15 The affiant also interprets CC1’s texts on March 16 and 17, 2023 as communicating Jones’s  
16 request for additional money upfront per the alleged agreement that was supposedly reached at the  
17 Skates on the Bay meeting, and A. Duong’s text about a check as an agreement to provide such funds.  
18 *Id.* ¶ 84. In support, the affidavit merely alleges that CC1’s texts were close in time to separate requests  
19 CC1 sent Jones for his help with selling EH container homes. *Id.* ¶ 85. No source other than CC1’s  
20 unreliable statements supports the affiant’s reading of A. Duong’s message.

21 Other March 26, 2023 messages between CC1 and A. Duong suffer from the same defects.  
22 According to the affidavit, the texts allegedly (1) reflect surprise about the obligation to submit an  
23 official proposal to Oakland for EH funding, and (2) show that A. Duong endorsed the terms of the  
24 alleged bribe as laid out by CC1. *Id.* ¶¶ 87, 89, 92.<sup>10</sup> But these inculpatory interpretations only rely

25 <sup>10</sup> In response to texts from CC1 regarding Jones generally “want[ing] direct access [to \$\$],” A. Duong  
26 responds with texts including to complain about Jones “playing the game,” and saying, “Ain’t nothing  
27 free or front cuz we did all that to help her ass win.” *Id.* ¶¶ 88, 89. Other text messages are allegedly  
28 regarding the Apple note CC1 created. CC1 writes: “...Am I missing something? We are missing  
communications assignments.” A. Duong responds to the inquiry about communications assignments,  
replying “Not missing” and “All right.” *Id.* ¶ 92.

1 on CC1’s account. *Id.*

2 Finally, the allegations linking A. Duong to any alleged attack on CC1 on May 3, 2024 and  
3 June 9, 2024 are insufficient to support probable cause for the searches because they also derive from  
4 CC1’s unreliable statements. The only other evidence cited in support of the allegations as to A. Duong  
5 regarding the May 3, 2024 incident is toll records showing that he communicated with OPD and his  
6 family. *Id.* ¶¶ 122–24. But these fail to corroborate CC1’s account. First, the alleged timeline of the  
7 incident rests solely on CC1’s statements, which are generally unreliable and, on this point,  
8 inconsistent. *Id.* ¶ 119 n.16. Absent any reliable timeline, A. Duong’s call logs on May 3 and 4, 2023  
9 are irrelevant. Second, records of phone calls between family members who routinely communicate  
10 with each other, including for work, are not enough by themselves to show that they were orchestrating  
11 an assault. Finally, records showing that A. Duong called the OPD emergency line tend to show that  
12 he *wasn’t* involved in an assault on CC1 because that would mean that he was calling police to report  
13 on himself. And the affiant’s conclusion that the June 9, 2024 shootout outside CC1’s house was a  
14 coordinated hit against CC1 involving the Duong family, *id.* ¶ 144, is also based primarily on CC1’s  
15 statements, combined with mere circumstantial evidence regarding the correlation between the timing  
16 of the shooting (June 9) and CC1’s first interview with the FBI (June 6), and contemporaneous toll  
17 records showing A. Duong communicated via phone with an Asian male that the FBI initially and  
18 erroneously suspected as being involved in the shooting. *Id.* ¶¶ 144, 148–50. Crucially, the affiant  
19 never alleges that the Duongs were aware of CC1’s cooperation with the FBI, which renders both  
20 incidents entirely irrelevant to the specific bribery offense that is the actual subject of the June 2024  
21 warrants.

22 Unlike the warrants in *Loloe* and *Bennett* that were saved by “evidence from multiple,  
23 independent sources,” the June 14, 2024 warrant has a remarkable dearth of independently sourced  
24 evidence corroborating CC1’s word, the remainder of which is glaringly insufficient to establish  
25 probable cause for the alleged crime.

26 Here, to search and seize information from A. Duong related to an alleged bribery, the  
27 government must provide probable cause (1) that he acted “corruptly” to give, offer, or agree to give a  
28 thing of value “with intent to influence” a government agent, 18 U.S.C. § 666(a)(2), and (2) that

1 evidence of the crime would be found in the place to be searched. Absent the evidence and conclusions  
2 drawn directly from CC1’s statements, the affidavits do not satisfy even the first requirement. The  
3 same issue plagued a challenged warrant in *Donahoe v. Arpaio*, 986 F. Supp. 2d 1091 (D. Ariz. 2013).  
4 There, the affidavit contained misleading statements and omissions regarding evidence of bribery. *Id.*  
5 at 1112–15. The court found the misstatements material to the finding of probable cause because  
6 “[a]bsent the misrepresentations,” all that was left were “two [trivial] facts,” and as a result, “the  
7 affidavit does not satisfy” the basic requirement to provide reason to believe “that a crime was  
8 committed.” *Id.* at 1116.

9 Like *Donahoe*, the evidence that remains after disregarding CC1’s misstatements—including  
10 texts and toll records—is trivial and, even making reasonable inferences, provides no reason to believe  
11 that A. Duong acted with a corrupt intention to effectuate a bribe. When viewed as a whole, the  
12 existence of a so-called bribe hinges on CC1’s self-serving account of certain meetings at which a  
13 corrupt deal was supposedly formed. *Supra* at Section II.C. None of the subsequent documentary  
14 evidence cited in the affidavit suffices to show a crime was committed because the relevance of such  
15 evidence relies on the agent’s interpretations, which in turn rely on his earlier conclusions about the  
16 bribe that CC1 alone claims existed. *Supra* at Section II.C.

17 To the extent the affiant relies on his generic training, experience, and knowledge of the  
18 investigation as an independent source of evidence, that also falls short. As an initial matter, Agent  
19 Haunold’s specific experience in the area of public corruption investigations is limited, which is  
20 unsurprising given that he was employed by the FBI (inclusive of training) for only three years at the  
21 time of the affidavit. *See* Dkt. 120-1 ¶¶ 4–5. And even allegations based on the affiant’s training and  
22 experience must derive from and build upon proper “foundational facts,” lest they be “mere  
23 conclusions” that are “entitled to little weight.” *United States v. Cervantes*, 703 F.3d 1135, 1139 (9th  
24 Cir. 2012) (citing *United States v. Thomas*, 211 F.3d 1186, 1190 (9th Cir. 2000)). While a court may  
25 consider an affiant’s “training and experience,” it is incumbent upon him to “explain the nature of his  
26 expertise or experience and how it [bore] upon the facts which prompted” the search. *Id.* at 1139–40;  
27 *see also United States v. Weber*, 923 F.2d 1338, 1345 (9th Cir. 1990) (invalidating warrant to search a  
28 defendant’s home for child pornography for lack of probable cause because the affidavit relied on an

1 expert’s “rambling boilerplate” generalizations about what is typically found in the homes of various  
2 categories of sexual offenders without sufficient case-specific facts).

3 **b. June 20, 2024 rollover affidavit**

4 To the extent that the rollover affidavit incorporates and relies on the original affidavit, the  
5 material omissions analyzed above likewise undermine probable cause to seize the additional items  
6 described in the rollover affidavit. In addition, the new evidence cited in the rollover affidavit does not  
7 supply probable cause for its seizure when divorced from CC1’s unreliable statements.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] Without CC1’s statements, A. Duong’s mere possession of these items does not  
16 provide probable cause for any alleged crime—which in any event has nothing to do with the specific  
17 bribery offense that is the actual subject of the June 2024 warrants.

18 In addition, without CC1’s statements, the remaining evidence in the rollover affidavit allegedly  
19 connecting A. Duong to the June 9, 2024 shooting is shockingly trivial. It consists of the affiant’s  
20 impression that an Asian male initially and erroneously suspected by the FBI as being involved in the  
21 shooting was “agitated” when questioned about their communications with A. Duong. Dkt. 120-2 ¶  
22 17. [REDACTED]

23 [REDACTED]  
24 [REDACTED] Yet, contrary to CC1’s unsubstantiated statement that one of the shooters  
25 was an Asian male, multiple independent witnesses confirmed that the shooting actually was between  
26 CC1 and two Mexican or Hispanic males. Dkt. 120-1 ¶¶ 146–47. [REDACTED]  
27  
28

1 [REDACTED] [REDACTED]  
2 [REDACTED].<sup>12</sup> And of course, OPD's  
3 ultimate investigation, arrest, and charging of the shooting as an offense wholly unrelated to the Duongs  
4 vividly illustrates the dangerous error in the affidavit's utter reliance on CC1. *See supra* note 3.

5 \*\*\*

6 Taken together, all the affidavits' material omissions undermine any finding of probable cause  
7 as to A. Duong. As explained in D. Duong's Motion, *Leon*'s good faith exception cannot save the June  
8 2024 warrants because officers may not reasonably rely on a warrant issued based on  
9 misrepresentations and omissions. Dkt. 119 at 11; *Leon*, 468 U.S. at 922–23.

10 **3. Probable Cause Did Not Exist to Search Andy Duong's Home and Car**

11 Notwithstanding the material omissions that fatally plague the June 2024 search warrant  
12 applications, the affidavits also fail to supply a reasonable nexus between A. Duong's home or vehicle  
13 and the conduct alleged in the affidavits. As explained in D. Duong's Motion, probable cause that a  
14 crime has been committed is not by itself adequate to search a defendant's home because "the home is  
15 entitled to special protection as the center of [] private [life]." Dkt. 119 at 20, citing *Georgia v.*  
16 *Randolph*, 547 U.S. 103, 115 (2006). There must be "reasonable cause to believe that the things listed  
17 as the objects of the search are located in the place to be searched" and a "reasonable nexus between  
18 the activities supporting probable cause and the locations to be searched." *United States v. Pitts*, 6 F.3d  
19 1366, 1369 (9th Cir. 1993) (citations omitted). Suppression is proper when a warrant "contains no  
20 facts making it likely that anything the officers sought was present" in a residence. Dkt. 119 at 20,  
21 citing *United States v. Ramos*, 923 F.2d 1346, 1352 (9th Cir. 1991).

22 **June 14, 2024 Warrant:** The allegations described in the June 14, 2024 affidavit focus on  
23 specific in-person meetings or altercations at Seabreeze on the Dock, Skates on the Bay, Peet's Coffee,  
24

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25 11 [REDACTED]  
26 12 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 1211 Embarcadero, and CC1's home; electronic communications and documents (that the government  
2 already had collected pursuant to prior warrants); and various financial transactions. Yet at no point  
3 does the affidavit allege or identify facts pointing to any meetings in A. Duong's home or vehicle; any  
4 relevant mailing to or from A. Duong's home address; or any use of his home or car to store or transport  
5 people, money, or records related to the alleged scheme. Nor does the affidavit allege specific facts  
6 that agents would expect to find hard copies or local devices containing any such evidence in A.  
7 Duong's home or car. Instead, it offers boilerplate recitations throughout about what might be found  
8 in A. Duong's home or car. Dkt. 120-1 ¶ 166. As just one example, the affiant asserts that he is aware  
9 that computer equipment was used in connection with documents used in the alleged bribery scheme,  
10 including to print relevant documents, to justify his belief that such a computer was located in A.  
11 Duong's house and car. *Id.* ¶ 167(e). But the only printout evidence alluded to in the affidavit was  
12 produced at a third-party print shop, not A. Duong's house. *Id.* ¶¶ 32–33, 61. Even more perplexing  
13 is that CC1 specifically told the affiant that CC1 had never seen A. Duong use a laptop. *Id.* ¶ 142 n.29.

14 **June 20, 2024 Rollover Warrant:** The rollover warrant suffers from the same and even more  
15 defects. The rollover warrant authorizes agents to search and seize additional items discovered in A.  
16 Duong's home and car. Dkt. 120-2 ¶¶ 13–16. But any reasonable cause to seize these additional items  
17 relies chiefly on (1) the fruits discovered in the Duongs' home and A. Duong's car while executing the  
18 original warrant, and (2) information and items from the search of the individual wrongly suspected of  
19 the shooting. *Id.* Neither of these suffice.

20 *First*, because the original warrant was defective as to the search of the Duongs' home and A.  
21 Duong's car, the items that agents found there pursuant to it must be excluded as “derivative of an  
22 illegality,” the so-called “fruit of the poisonous tree.” *See Ngumezi*, 980 F.3d at 1290 (citations  
23 omitted); *United States v. Pulliam*, 405 F.3d 782, 785 (9th Cir. 2005) (“[T]he exclusionary rule reaches  
24 not only primary evidence obtained as a direct result of an illegal search or seizure, but also evidence  
25 later discovered and found to be derivative of an illegality or ‘fruit of the poisonous tree.’”). But even  
26 if the Court doesn’t agree that the original warrant was defective, the items discovered in the Duongs'  
27 homes and A. Duong's car should nevertheless be disregarded in analyzing whether the rollover  
28 affidavit demonstrated probable cause because the items themselves cannot be used to show probable

1 cause for their own seizure. *United States v. Barajas*, 517 F. Supp. 3d 1008, 1025 –26 (N.D. Cal.  
2 2021). More fundamentally, the best indication that the items sought to be seized by the rollover  
3 warrant have absolutely no nexus to the charged bribery scheme is the fact that none of that evidence  
4 is cited or otherwise relied upon in the indictment.

5 *Second*, the new non-seized evidence cited in the rollover warrant affidavit is far too attenuated  
6 to supply a sufficient basis for the seizures in the home and car, even when paired with the incorporated  
7 original affidavit. For example, the new evidence cited in the rollover warrant that was gathered from  
8 the search of the individual wrongly suspected of the shooting, including evidence of his purported  
9 “agitation” regarding CC1, and the toll records of their communications with A. Duong, does not  
10 provide any proper basis. As an initial matter, the purported connection between the wrongly suspected  
11 individual and the June 9, 2024 shootout depends on CC1’s description of one of the gunmen as an  
12 Asian male (which the subsequent OPD investigation ultimately dispelled). Dkt. 120-1 ¶ 146. But the  
13 warrant affidavits contain far more corroboration that Mexican or Hispanic men were involved in the  
14 shootout outside CC1’s house. *Id.* ¶ 147. Additionally, the financial documents found at the wrongly  
15 suspected individual’s residence are also too attenuated to establish reasonable cause to seize the  
16 rollover items from A. Duong’s home, given that the affidavit fails to draw any connection between  
17 those documents and the alleged bribery in this case, the offense giving rise to the warrant in the first  
18 place.

19 *Leon*’s good faith exception does not save either warrant. Although the Fourth Amendment  
20 generally does not require suppression of evidence “obtained in objectively reasonable reliance on a  
21 subsequently invalidated search warrant,” *Leon*, 468 U.S. at 922–923, both affidavits are so lacking in  
22 facts connecting A. Duong’s residence or vehicle to the alleged bribery scheme that no reasonable  
23 officer could have believed it established the constitutionally required basis for those searches. *See*  
24 Dkt. 119 at 22 (citing analogous cases).

25 **B. Other Warrants Obtained Are Impermissibly Overbroad**

26 Finally, aspects of the February, March, and May 2024 warrants to search A. Duong’s iCloud  
27 and Microsoft accounts were overbroad. As explained in D. Duong’s Motion, a search warrant is  
28 overbroad if it authorizes the search and seizure of items that fall outside the scope of the probable

1 cause underlying the warrant, and suppression is the appropriate remedy. Dkt. 119 at 22, citing *United*  
2 *States v. SDI Future Health, Inc.*, 568 F.3d 684, 702 (9th Cir. 2009). A court may “strike from a  
3 warrant those portions that are [unconstitutionally broad],” and “preserve those portions that satisfy the  
4 Fourth Amendment.” *Id.* Three categories of information are overbroad: (1) the March 2024 cell  
5 phone warrant is overbroad in its authorization to search and seize data other than location data, (2) the  
6 February 2024 iCloud and May 2024 Microsoft warrants are overbroad in their authorization to search  
7 and seize documents regarding interactions between “any” state or local government or officials, and  
8 (3) the February 2024 iCloud and May 2024 Microsoft warrants are additionally overbroad in their  
9 authorization to search and seize evidence dated before December 1, 2021. The good faith exception  
10 does not apply to any of these categories.

11 **1. The March 22, 2024 Cell Phone Warrant Is Partially Overbroad**

12 The March 22, 2024 warrant and affidavit are identical as to all Defendants, including A.  
13 Duong. *See* Dkt. 120-3. As detailed in D. Duong’s Motion, the affidavit establishes, at most, probable  
14 cause to obtain location information associated with the Defendants’ cell phones. Dkt. 119 at 23. It  
15 explicitly seeks only location data and cabins its justifications for the warrant to such data. *Id.*; Dkt.  
16 120-3 ¶ 1. The crux of the affidavit is that it seeks historical cell site records to confirm the Defendants’  
17 attendance at certain meetings. Dkt. 120-3 ¶ 88. The warrant is not so limited. It authorizes the  
18 government to seize additional information: subscriber identities and addresses; billing and payment  
19 information; account start and service records; device and instrument identifiers; and complete  
20 connection/session records, including IP addresses, sector information, and timing-advance data. *Id.*,  
21 Attachment B-2. None of those categories finds support in the affidavit’s theory of probable cause.

22 **2. The February and May 2024 Warrants Are Partially Overbroad**

23 The February 23, 2024 and May 7, 2024 warrants authorizing searches of A. Duong’s iCloud  
24 and Microsoft accounts are each overbroad in two principal ways.<sup>13</sup> First, both warrants authorize the  
25 seizure of materials “related to any interactions between [CWS representatives], and *any* state or local

---

27 <sup>13</sup> A. Duong has standing to challenge the May 7, 2024 search warrant for information associated with  
28 his CWS Microsoft email account. *See United States v. Ziegler*, 474 F.3d 1184, 1190 (9th Cir. 2007).

1 government body or government officials.” Chan Decl. Ex. 5, Attachment B at 6; Chan Decl. Ex. 6,  
2 Attachment B at 5 (emphasis added). Yet each affidavit confines the defined investigation and  
3 assertions in support of probable cause solely to alleged activities related to a limited set of enumerated  
4 public officials.<sup>14</sup> Chan Decl. Ex. 5 ¶¶ 22, 105; Chan Decl. Ex. 6 ¶¶ 25, 145. By sanctioning searches  
5 related to “any” state or local government body or official, the warrants run afoul of the Fourth  
6 Amendment because they sweep in evidence involving officials outside those specifically named and  
7 whose alleged conduct is described in the affidavit, all without providing any probable cause support  
8 whatsoever. *See, e.g., United States v. Spilotro*, 800 F.2d 959, 963–67 (9th Cir. 1986) (affirming  
9 suppression where a warrant’s “authorization to seize ‘gemstones and other items of jewelry’ was far  
10 too broad,” given the affidavit “mentioned only a few stolen diamonds”); *SDI Future Health, Inc.*, 568  
11 F.3d at 703–04.

12 The warrants are also defective because they both authorize the search and seizure of evidence  
13 outside the date range for which any facts underlying probable cause are alleged in the affidavits. The  
14 iCloud warrant authorizes the search and seizure of documents from January 1, 2020 to February 23,  
15 2024. Chan Decl. Ex. 5, Attachment B at 3, 5. But nothing in the affidavit supports the seizure of  
16 materials before December 2021. *Id.* ¶¶ 85–92. The only references to earlier events in the affidavit  
17 appear in footnotes 14 (which does not implicate A. Duong) and 19 (which refers to a different  
18 investigation covering a different time frame and expressly states that it does not contribute to  
19 establishing probable cause), but neither supports the need for the enlarged temporal scope. *Id.* ¶¶ 97  
20 n.14, 104 n.19. The Microsoft warrant authorizes the search and seizure of documents dating back  
21 even further, to January 1, 2019. Chan Decl. Ex. 6, Attachment B at 3–4. But, as with the iCloud  
22 warrant, the earliest date associated with any potentially relevant allegation described in the affidavit  
23 is almost three years later, around December 2021. *See, e.g., In re Search of Google Accts. identified*  
24 *in Attachment A*, 92 F. Supp. 3d 944, 952–53 (D. Alaska 2015) (denying government’s ex parte warrant  
25 application when the affidavit established probable cause to search for evidence within a specified time

26  
27 <sup>14</sup> February 2024 affidavit: [REDACTED]  
28 105. May 2024 affidavit: [REDACTED]  
6 ¶¶ 25, 145.

Chan Decl. Ex. 5 ¶¶ 22,  
Chan Decl. Ex.

1 period yet government did not confine its warrant application to that known time period); *United States*  
2 v. *Lofstead*, 574 F. Supp. 3d 831, 843 (D. Nev. 2021) (granting motion to suppress for overbreadth  
3 when there was probable cause to search for data only in a “limited window of time” but resulting  
4 “warrant did not reflect that limitation”).

5 \*\*\*

6 All three warrants’ defects require suppression of the out-of-scope evidence. The good faith  
7 exception is inapplicable to the conduct of the agents because the infected portions of each warrant are  
8 “so facially deficient” that they should have recognized it exceeded the scope of evidence for which  
9 the corresponding affidavit alleges probable cause. *Leon*, 468 U.S. at 923. Courts refuse to apply the  
10 good faith exception when no evidence suggests that the officers could reasonably presume either  
11 warrant to be valid given the incongruities with their respective affidavits. *E.g.*, *Ctr. Art Galleries-*  
12 *Hawaii, Inc. v. United States*, 875 F.2d 747, 753 (9th Cir. 1989); *SDI Future Health, Inc.*, 568 F.3d at  
13 706 (good faith exception inapplicable when there was “no evidence … agents in fact relied on the  
14 affidavit to restrict their search”).

15 **V. CONCLUSION**

16 For the reasons stated above, A. Duong respectfully requests that this Court (1) order a *Franks*  
17 hearing regarding the June 2024 affidavits’ failure to disclose relevant information about CC1, (2)  
18 suppress evidence stemming from the search of his residence and vehicle, and from the room of D.  
19 Duong’s house that the government alleges is attributable to A. Duong<sup>15</sup> pursuant to both June 2024  
20 warrants, (3) suppress evidence, other than location data, seized pursuant to the overbroad March 2024  
21 warrant for his cellular phone records, (4) suppress evidence regarding “any” state or local government  
22 or officials, other than that regarding the limited set of public officials enumerated in the accompanying  
23 affidavits, seized pursuant to the overbroad February 2024 iCloud and May 2024 Microsoft warrants,  
24 and (5) suppress evidence pre-dating December 1, 2021, seized pursuant to the overbroad February

25  
26 <sup>15</sup> By both joining in D. Duong’s motion and filing the instant motion, A. Duong seeks to suppress  
27 everything seized in the room of D. Duong’s house that the government alleges is attributable to A.  
28 Duong. *See, e.g.*, *United States v. Davis*, 932 F.2d 752, 757 (9th Cir. 1991) (finding that defendant had  
a legitimate expectation of privacy in another’s apartment because he could access it and stored items  
there); *United States v. Patterson*, 276 F.Supp.3d 994, 999–1000 (S.D. Cal. 2017) (similar).

1 2024 iCloud and May 2024 Microsoft warrants.

2 DATED: December 4, 2025

3 Respectfully submitted,

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